In November 1990, when it appeared clear that no clean-up deadline would be met, the regional board ordered Paco and the Port District to submit a description of all clean-up activities to be conducted and to supply the Board with a viable deadline. Based on their consultants' study of alternative clean-up strategies, the dischargers petitioned the regional board to revise the clean-up level from 1,000 mg/kg to 4,000 mg/kg, with a new completion date of April 1, 1993. The dischargers asserted that this clean-up level would save approximately $3.6 million in clean-up costs. In December 1991, the regional board approved the new standards.

One of the petitioners in this case, Eugene Sprofera, contended that the RWQCB improperly excluded him from testifying at the hearing at which it set the less stringent standards. Sprofera and the Environmental Health Coalition petitioned WRCB to uphold Order No. 85-91 at the 1,000 mg/kg concentration levels.

WRCB's September 17 ruling granted petitioners' request and ordered Paco and the Port District to reduce the copper concentration in the affected portion of San Diego Bay to a sediment copper concentration less than 1,000 mg/kg. The Board found that the less stringent standard violates section 13304 of the Water Code, its Enclosed Bays and Estuaries Plan, and WRCB Resolution 68-16, which states that existing water quality shall be maintained unless a change will be "consistent with the maximum benefit to the people, will not unreasonably affect present and anticipated beneficial uses of such water and will not result in water quality less than that prescribed in the policies." In addition, by failing to allow Mr. Sprofera's testimony, the regional board violated section 647, Title 23 of the CCR. The ruling also upheld the previous clean-up deadline of April 1993, but gave Paco and the Port District the opportunity to present new arguments and evidence that a clean-up level of 4,000 mg/kg is sufficient to protect the environment.

FUTURE MEETINGS

Workshop meetings are generally held the first Wednesday and Thursday of each month. For exact times and meeting location, contact Maureen Marche at (916) 657-0990.

RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

Executive Director:
Peter Douglas
Chair: Thomas Gwyn
(415) 904-5200

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. This zone, except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), determines the geographical jurisdiction of the Commission. The Commission has authority to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip. Except where control has been returned to local governments, virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the Federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission has authority to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing ordinances. Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases are certified, formally adopted by the local government, and then "effectively certified" by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. Of the 126 certifiable local areas in California, 79 (63%) have received certification from the Commission as of January 1, 1992.

The Commission meets monthly at various coastal locations throughout the state. Meetings typically last four consecutive days, and the Commission makes decisions on well over 100 line items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Monterey Bay Sanctuary Dedicated. September 20 marked a long-awaited day that many environmental groups doubted would ever come: the official designation of the Monterey Bay National Marine Sanctuary (MBNMS). The designation substantially advances efforts of environmentalists in a 15-year battle to ward off continued threats to portions of the California coast from offshore oil drilling and development. *[12:2&3 CRLR 224]*

As the largest federal sanctuary in the nation, and second only to the Great Barrier Reef refuge off the Australian coast, the MBNMS extends over six counties

from Marin to San Luis Obispo, embracing one-quarter of the state's coastline and 5,312 square miles of ocean. The sanctuary is home to one of the richest and most diverse marine animal and plant environments in the world, harboring 27 species of marine mammals, 94 species of seabirds, and at least 345 species of fish. It is also home to 22 threatened and endangered species. The area boasts the largest and deepest submarine canyon on the shores of North America; the canyon harbors an unusual and delicate ecosystem fed by upsurges of nutrient-rich cold water from its depths.

Although the timing of the dedication of the long-proposed sanctuary is clearly a function of election year politics, President Bush nonetheless pleased many environmental groups and coastal lovers by finally making the sanctuary a reality. Earlier this year, Bush was applauded for choosing the largest of several potential boundaries for the refuge. The initial project proposal called for a protected area only about the size of San Francisco.

MBNMS guidelines effectively ban all offshore drilling, gas exploration, and waste dumping in the protected area. Towns along the coast will be required to provide secondary treatment for sewage discharged into the water. Sport and commercial fishing will be allowed, but under careful scrutiny. Oil tankers will still pass through the sanctuary, but will be monitored by the National Oceanic and Atmospheric Administration (NOAA), the agency that will manage the sanctuary. Despite their obvious pleasure, some environmental groups still contend that the Bush administration's current guidelines for the marine refuge include so many loopholes that key portions of the marine area could be left unprotected from potential oil spills and sewage dumping. Problem areas remaining include sewage and dredge dumping along the edges of the sanctuary, including in state waters; an absence of regulations to guide passing oil tankers; and polluted run-off water from cities and farms along the coast.

Critics of the newly-created refuge are most outspoken about enforcement. Despite the sanctuary designation, few federal resources will be devoted to its management. At first, only one person will be in charge of overseeing the entire protected area. Enforcement of the area's restrictions will have to be carried out primarily by beachgoers, fishers, and other citizens trained by Save Our Shores, a group that advocated creation of the sanctuary. Most conservation groups remain hopeful that the plan can be strengthened in the coming years if adequate money is made available.

Last May, the Coastal Commission joined in an agreement with NOAA, the U.S. Environmental Protection Agency (EPA), the California Environmental Protection Agency, the state Water Resources Control Board (WRCB), the Regional Water Quality Control Boards for the Central Coast and San Francisco Bay regions, and the Association of Monterey Bay Area Governments to provide an ecosystem-based water quality management process that integrates the mandates and expertise of the combined agencies to protect the resources, quality, and compatible uses of the MBNMS. The Coastal Commission's role is to evaluate the effects of proposed activities on coastal land and water uses and natural resources in the coastal zone to determine if the proposed activities are consistent with the California Coastal Management Program. The Commission will also work with WRCB and the San Francisco Bay Conservation and Development Commission to ensure that protection of the MBNMS's resources is appropriately incorporated into the California Coastal Nonpoint Pollution Control Program to be submitted to NOAA and the federal EPA for approval.

At its August meeting, the Coastal Commission unanimously approved the federal plan to create the sanctuary. The Commission intends to continue lobbying for additional funds for protection of the sanctuary.

The Dredging of Batiquitos Lagoon. Following a May 26 judicial decision dismissing a Sierra Club/Audubon Society lawsuit which attempted to halt the Batiquitos Lagoon "restoration" project, the Port of Los Angeles and the City of Carlsbad announced final approval of the project on September 2. The project involves permanently opening the lagoon mouth and dredging up to three million cubic yards of sand and silt from 380 acres of lagoon. *[12:2&3 CRLR 36, 224–25; 11:3 CRLR 166]*

On May 26, a San Diego County Superior Court judge held that the Los Angeles Port District could proceed with the project, rejecting the contention that the dredging would destroy the existing shallow water habitat that supports nesting birds, including endangered species, and replace it with something altogether different. The Sierra Club has consistently noted that the Port is motivated to undertake the huge dredging project solely to mitigate the environmental destruction caused by its proposed expansion of the Port of Los Angeles. (*See supra* reports on SIERRA CLUB and NATIONAL AUDUBON SOCIETY.) An appeal has been filed and is pending.

However, both projects became clouded with uncertainty in August, when Commission staff announced its disapproval of the U.S. Army Corps of Engineers' $550 million dredging and landfill proposal for the Port of Los Angeles, and the Commission delayed an expected vote on the project until its October meeting in Monterey. The $550 million proposal constitutes a substantial portion of the proposed $2 billion 2020 Plan for expansion of the Port of Los Angeles, so-named because it is designed to meet expected growth in Port usage over the next 30 years. The project would deepen the Port's shipping channels and increase the size of Terminal Island by 582 acres for new cargo terminals. A proposal more than twice as expensive was rejected in 1990.

The staff report concluded that the project is inconsistent with the Coastal Act "because fill of open coastal waters has not been minimized, marine resources are not maintained, a feasible [and] less environmentally damaging alternative was not examined, adverse impacts were not fully avoided, and adequate marine resources mitigation is not provided." Larry Simon, Commission Ports Coordinator, said that the bottom line as the proposal now stands is that the Port's "restoration" of 380 acres of marine resources at Batiquitos Lagoon would inadequately offset the loss of 582 acres of Port waterways, home to a variety of sealife, including the endangered California least tern and brown pelican. The Port has not identified another 200 acres of waterways that could be mitigated by the Corps. The staff indicated its openness to a scaled-down Port expansion of 380 acres, noting that—if approved—such a project would still be twice as large as the biggest landfill project ever accepted by the Commission. In response, Port officials accused Commission staff of using "backwards logic" by placing restoration acreage ahead of the economics of the project.

At the Commission's August 12 meeting, Commissioner David Malcolm, a strong supporter of the Port project, successfully called for delay of the decision when it appeared that supporters had the votes of only five of ten Commissioners present, one short of the majority needed for approval. Ostensibly, the delay will enable the Port and the Corps to resolve environmental concerns raised by the staff Simon said it remains unclear how they will be able to satisfactorily mitigate without bringing back a smaller project.

Commission's Definition of "Major Public Works" Approved by OAL. On

September 30, the Office of Administrative Law (OAL) approved the Commission's amendment to section 13012, Title 14 of the CCR, which defines the term "major public works" as that term is used in PRC sections 3061 and 3063. *[12:1 CRLR 160–61]*

Approvals and denials of coastal development permits for major public works by local governments after an LCP is certified may be appealed to the Commission. The Commission itself must approve such permits if no LCP has been certified. Section 13012 previously defined major public works as "facilities that cost more than one hundred thousand dollars." The amendment adds another category of projects included in the definition: projects of any cost "that would serve regional or statewide recreational needs." This gives the Commission the opportunity to review public works projects in the coastal zone that provide substantial recreational benefits regardless of cost. Last May, OAL disapproved the proposed amendment on grounds it failed to satisfy the consistency and clarity standards of Government Code section 11349.1. *[12:2&3 CRLR 225]* After modification of the rulemaking record and resubmission by the Commission, OAL approved the rule.

New Procedures for Cease and Desist Orders Approved. Following a public hearing in May, the Commission adopted sections 13180–13188, Title 14 of the CCR. *[12:2&3 CRLR 225]* The provisions implement the Commission's authority to issue cease and desist orders to people who fail to obtain permits for developments requiring permits or whose activity is inconsistent with a previously issued permit. The provisions also permit the Commission's Executive Director to issue a cease and desist order when immediate action is necessary before the matter can be brought to the Commission. Failure to abide by a cease and desist order carries a civil fine of up to $6,000 per day. OAL approved the rulemaking package on August 4.

Chevron Given Conditional Approval to Ship Oil by Tanker From Point Arguello. On August 17, the Santa Barbara County Board of Supervisors gave Chevron Corporation tentative approval to ship oil by tankers from its offshore Point Arguello oil field to Los Angeles. The strict terms and conditions of the County's grudging approval of the use of tankers off the Santa Barbara coast pleased environmentalists. Chevron rejected the action, however, saying the restrictions make the plan unworkable. *[12:2&3 CRLR 225–26]*

The Board's offer stated that Chevron may use tankers temporarily only if, among other things, it signs a contract with an onshore pipeline to move the oil by land within three years. Moreover, the company would have to help build a $200 million pipeline to transport the crude and pay monetary damages if the promise is not kept. Chevron would also have to meet a number of pipeline construction deadlines and, in the interim, ship 35,000 barrels per day through an existing pipeline network that the company says is too costly and inefficient.

Chevron needs the tanker permit before it can increase Point Arguello's output from its present 46,000 barrels per day—less than half of its capacity. Point Arguello contains an estimated 300 million barrels of crude oil, enough to fuel the entire national economy for about 20 days. The County, wary of a spill like one that fouled the Santa Barbara coast in 1969, wants Chevron to use pipelines to carry the field's oil. The company contends that there is not enough pipeline capacity available to carry all the field's production and is reluctant to invest in new capacity.

The County and environmental groups concede that existing pipelines are insufficient to accommodate potential production at Point Arguello, but strongly believe that transport by pipeline is safer than by tanker. They have been relentlessly suspicious that once tanker shipping is begun, Chevron will attempt to continue shipping—which is cheaper than by pipeline—unless it is contractually bound to construct and utilize a new pipeline.

Chevron and its partners in the project, which include Texaco and Phillips Petroleum, claim that the restrictions on the Board's offer of approval undermine the framework of the proposal and practically guarantee that the company will not be able to meet timeline milestones for measuring progress of the new pipeline. Therefore, the company would have to cease tankering shortly after it begins and face unreasonable penalties.

On August 28, Chevron filed an appeal with the Coastal Commission. The Commission, which is authorized to overturn the Board's decision, was scheduled to consider the appeal at a public hearing at its October 13–16 meeting in Monterey. Chevron also plans to proceed with a $100 million lawsuit against Santa Barbara County.

LEGISLATION

AB 3459 (T. Friedman) is a direct response to the Mark Nathanson extortion scandal. *[12:2&3 CRLR 224; 12:1 CRLR 161]* Among other things, the bill adds Article 2.5 to Chapter 4, Division 20 of the Public Resources Code, entitled "Fairness and Due Process." The article states "that the duties, responsibilities, and quasi-judicial actions of the Commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the Commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority." The bill prohibits Commission members and interested persons from engaging in ex parte communications about a matter within the Commission's jurisdiction, unless (1) the Commission member notifies the interested party that a full report of the ex parte communication will be entered into the Commission's official record, and (2) the Commission member fully discloses and makes public the ex parte communication by providing a full report of the communication to the Executive Director within seven days after the communication. The bill also prohibits Commission members and alternates from participating in any way in or attempting to use his/her official position to influence a Commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported. If a violation of this provision occurs and a Commission decision is affected, an aggrieved person may seek a writ of mandate from a court requiring the Commission to revoke its action and rehear the matter.

AB 3459 also provides that any person applying to the Commission for approval of a development permit shall provide the Commission with the names and addresses of all persons who, for compensation, will be communicating with the Commission or staff on their behalf. Full disclosure of this information is required prior to any communication on behalf of project proponents; failure to comply is a misdemeanor. This bill was signed by the Governor on September 28 (Chapter 1114, Statutes of 1992).

SB 1677 (Beverly) authorizes commercial, deepwater ports to submit a report to the State Coastal Conservancy that identifies and describes deepwater habitats that could be enhanced, restored, or newly-created as potential mitigation associated with the construction of port facilities in deepwater areas located within a port. This bill requires Conservancy, in cooperation with the Coastal Commission, to verify the information contained in the report. The Governor signed this bill on August 30 (Chapter 575,

Statutes of 1992).

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at page 227:

AB 2559 (Farr) states the intent of the legislature that the Commission, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific community so that the Commission may receive technical advice and recommendations with regard to its decisionmaking; requires the Commission, to the extent its resources permit, to establish one or more scientific panels; and encourages the Commission to seek funding from any appropriate public or private source for this purpose. This bill was signed by the Governor on September 26 (Chapter 965, Statutes of 1992).

AB 375 (Allen). The California Environmental Quality Act requires a public agency to adopt a monitoring or reporting program for changes to a project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. This bill requires public agencies, if there is a project for which mitigation is adopted, to adopt mitigation measures as conditions of project approval. This bill was signed by the Governor on September 27 (Chapter 1070, Statutes of 1992).

SB 1449 (Rosenthal). Under existing law, any person who violates any provision of the California Coastal Act of 1976 is subject to a civil fine not to exceed $10,000, and may be subject to a specified additional daily civil fine for any development in violation of the Act. This bill deletes those penalties, and authorizes civil liability to be imposed on any person who performs or undertakes development in violation of the Act, or inconsistent with any coastal development permit previously issued by the Commission or a local government that is implementing a certified LCP or a port governing body that is implementing a certified port master plan, subject to specified maximum and minimum amounts, varying according to whether the violation is intentional and knowing. This bill was signed by the Governor on September 28 (Chapter 955, Statutes of 1992).

SB 1578 (McCorquodale). The California Coastal Act of 1976 requires specified mitigation measures to be taken where any dike and fill development is permitted in wetlands in conformity with the Act. The permissibility of a proposed development subject to the Act is determined with regard to stated coastal resources planning and management policies. This bill—instead of referring to such a development being permitted in conformity with the Act—refers to the development being permitted in conformity to specified coastal resource planning and management policies relating to diking, filling, and dredging, and to other applicable policies set forth in the Act. This bill was signed by the Governor on September 28 (Chapter 1088, Statutes of 1992).

AB 854 (Lempert) creates the California Coastal Sanctuary which includes all state waters subject to tidal influence from the southernmost boundary of the MBNMS north to the southern boundary of the tidelands surrounding the Farallon Islands; and prohibits any state agency, with specified exceptions, from entering into any new lease for the extraction of oil or gas from the Sanctuary unless specified conditions are present. This bill was signed by the Governor on September 29 (Chapter 1174, Statutes of 1992).

AB 10 (Hauser) creates the California Coastal Sanctuary which includes all state waters subject to tidal influence from the southern boundary of tidelands surrounding the Farallon Islands north to the Oregon border, except for waters in the Sacramento-San Joaquin Delta situated east of the Carquinez Bridges; and prohibits any state agency, with specified exceptions, from entering into any new lease for the extraction of oil or gas from the Sanctuary unless specified conditions are present. This bill was signed by the Governor on September 29 (Chapter 1173, Statutes of 1992).

The following bills died in committee: **AB 72 (Cortese)**, which would have enacted a framework for the California Heritage Lands Bond Act of 1992; and **SB 284 (Rosenthal)**, which would have required the Commission to develop and implement a comprehensive enforcement program, to ensure that any development in the coastal zone is consistent with the California Coastal Act of 1976; oversee compliance with permits and permit conditions issued by the Commission; and develop and implement a cost recovery system to offset the costs of administering the enforcement program, consisting of fees charged to violators of the Act for the costs incurred by the Commission in the enforcement process.

LITIGATION

In a ruling that will have wide impact in California, the U.S. Supreme Court handed down its decision in ***Lucas v. South Carolina Coastal Council***, No. 94-453 (June 29, 1992), holding that "when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, he must be compensated."

In 1986, David Lucas, a local developer, purchased two lots for $975,000 on the Isle of Palms, a barrier island near Charleston, South Carolina. His purpose in purchasing the two lots was to build single-family homes similar to those on immediately adjacent parcels.

At the time Lucas purchased the property, the Coastal Zone Management Act, enacted by the South Carolina legislature in 1987, did not require him to obtain a permit from the South Carolina Coastal Council prior to building on the land. The Act governed only "critical areas," defined to include beaches and immediately adjacent sand dunes, within which Lucas' property did not fall.

In 1988, the South Carolina legislature enacted the Beachfront Management Act, establishing a "baseline" connecting the farthest inland points of erosion during the prior forty years. The legislature's stated purpose was to prevent erosion and preserve habitats for marine animals; however, the Act was also couched in terms of economic benefit to the state through tourism. Construction of "occupiable improvements" was absolutely prohibited on the seaward side of a line drawn 20 feet inland of, and parallel to, the baseline. The Act provided no exceptions or appeals process. Lucas' property lay seaward of the baseline and, accordingly, he was prohibited from building homes on the lots.

Lucas filed suit in the South Carolina Court of Common Pleas, contending that the construction ban effected a taking of his property requiring just compensation. At a bench trial, the court agreed that his property had been rendered "valueless," and concluded that Lucas' properties had been "taken" by operation of the Beachfront Management Act, ordering the Coastal Council to pay "just compensation" of more than $1.2 million.

On appeal, the Supreme Court of South Carolina reversed, relying on a line of U.S. Supreme Court decisions holding that when a "regulation respecting the use of property is designed to prevent serious public harm [by prohibiting "harmful or noxious uses"], no compensation is owing regardless of the regulation's effect on the property's value." The U.S. Supreme Court granted certiorari to determine whether "the Act's dramatic effect on the economic value of Lucas's lots accomplished a taking of private property under the Fifth and Fourteenth Amendments requiring the payment of 'just compensation.'"

Citing a law review article, the Court stated the problem in this area is "'not one of noxiousness or harm-creating activity at all; rather it is a problem of inconsistency between perfectly innocent and independently desirable uses.'" The question is whether South Carolina's interest in nurturing its resources is so great that it overrides any competing use of the land by Lucas. The Court said that the question must be answered in light of citizens' historic understandings "regarding the content of, and the State's power over, the 'bundle of rights' they acquire when they take title to the property." Title to real estate cannot be made subject to a state's subsequent decision to eliminate all economically beneficial use without compensation being paid to the owner, unless the state's right to do so inheres in the title itself. The Court concluded that the common law principles of property and nuisance transfer with title and therefore may be imposed upon subsequent owners. To avoid paying compensation, a state must prove that a prohibited use of property falls within the common law of nuisance in that state.

In a concurring opinion, Justice Kennedy stated that a "finding of no value must be considered under the Takings Clause by reference to the owner's reasonable, investment-backed expectations." However, Justice Kennedy believes that a state should be permitted to enact new regulatory laws in response to the changing needs and conditions of the state, and that courts must consider "all reasonable expectations whatever their source." Apparently taking a broader view than his colleagues in the majority, Kennedy stated that "[c]oastal property may present such unique concerns for a fragile land system that the State can go further in regulating its development and use than the common law of nuisance might otherwise permit." (*See supra* report on PACIFIC LEGAL FOUNDATION for related discussion of the *Lucas* case.)

The *Lucas* decision may receive its first test in California in a pending lawsuit: *Healing v. California Coastal Commission*, filed earlier this year in the Superior Court of Los Angeles. The Commission denied Healing, a land owner in Malibu Canyon, permission to construct a single-family home on his lot zoned for residential use. Part of the Commission's rationale is that it would like to see the area preserved for wildlife.

In ***Antoine v. California Coastal Commission***, 8 Cal. App. 4th 641 (July 31, 1992), the Second District Court of Appeal reversed a trial court's decision setting aside a Coastal Commission ruling that required public access as a condition to building a seawall.

Because of substantial erosion to the beach, beachfront homeowners of Sandyland Cove, a private subdivision that occupies approximately 40% of the shoreline in the Carpinteria area, applied to Santa Barbara County for a conditional use permit to enlarge an existing seawall that protected the area. In the late summer of 1983, the homeowners association applied to the County for an emergency permit to build the seawall while the application for the conditional use permit was under review. The County granted the emergency permit and construction of the seawall was completed in 1984. When the conditional use permit was granted on the condition that the association grant public access along the top of the seawall, Sandyland appealed the condition to the County's board of supervisors, which eliminated the condition. In August 1984, the association applied to the County for a coastal development permit, which was subsequently approved without a provision for lateral access to the public. The South Central Coast Watch, a private group, appealed the permit decision to the Coastal Commission, contending that the seawall extended into state tidelands and interfered with public beach access during all but extremely low tidal periods. The Commission found that the seawall did indeed encroach on state tidelands and imposed a condition requiring public access. After the Commission denied reconsideration, the association sued for declaratory relief and damages in inverse condemnation. The trial court reviewed the Commission's decision under the substantial evidence test, found no substantial evidence to support the Commission's finding that the seawall was on the state tidelands, and issued a writ of mandate ordering the Commission to remove the public access condition.

On July 31, the Second District reversed and remanded, finding that the trial court erroneously placed the burden of proving the seawall was on state land on the Commission, and holding that "an applicant for a coastal development permit has the burden of proving that the project will be built entirely on the applicant's own land and that it will not have an adverse effect on neighboring property." The court concluded that Sandyland failed to provide substantial evidence to meet this burden of proof. The court stated that the U.S. Supreme Court's decision in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), did not confer a fundamental right to a property owner to build a structure which interferes with public access without conditions that would compensate for that interference, such that the trial court should have used the independent judgment test in reviewing the Commission's decision. Under the circumstances of the case, the court found that it was nearly impossible to determine a fixed boundary because of the moving mean high tide line, and that encroachment on public lands for even part of the year justifies the imposition of public access conditions by the Commission.

On July 15 in ***Earth Island Institute v. Southern California Edison***, No. 90-1535 (U.S.D.C., S.D. Cal.), U.S. District Court Judge Rudi M. Brewster partially denied a motion for summary judgment that would have dismissed Earth Island Institute's lawsuit against Southern California Edison (SCE). The lawsuit alleges that SCE, as operator of the San Onofre Nuclear Generating Station (SONGS), is violating federal water pollution laws by discharging cooling water into the ocean. In ruling on SCE's motion, Judge Brewster left intact Earth Island's claim of federal Clean Water Act violations but dismissed nuisance and fraud claims, which eliminated the threat of punitive damages against the utility. The judge also refused to allow plaintiff to add the U.S. Environmental Protection Agency as a defendant, despite the Institute's allegations that the EPA has failed to enforce regulations at the plant.

The lawsuit was filed in November 1990 under the federal Clean Water Act. The act allows a citizen to go to court to protest environmental harm, but only when government regulators fail to diligently prosecute polluters. One year earlier, a 15-year, $46-million study by the Coastal Commission's Marine Review Committee found that SONGS has damaged offshore kelp beds and killed thousands of fish in its cooling system. *[12:2&3 CRLR 226–27; 9:4 CRLR 115]*

In July 1991, the Coastal Commission adopted a mitigation plan requiring Edison to improve the plant's fish protection systems, build an artificial reef nearby, and restore a coastal wetland in southern California. The Commission rejected an option requiring the retrofitting of SONGS' existing cooling system with cooling towers, which use less sea water. While Commission staff opined that the towers are the only technique which provides full marine resource protection, the Commissioners decided cooling towers would be too costly. The Commission did find that SCE was violating the terms of its federal discharge permit and recommended that the Regional Water Quality Control Board modify

Edison's permits to incorporate regular monitoring and reporting by Edison. *[11:4 CRLR 176–77]* However, on February 10, the San Diego Regional Water Quality Control Board, against the Commission's and its own staff's recommendations, unanimously decided there is no clear and convincing evidence to indicate that SONGS is in violation of its federal pollution discharge permit. *[12:2&3 CRLR 226–27]*

Attorneys for Earth Island claim that neither agency has been diligent in its efforts and vowed to continue its suit against Edison on the alleged federal pollution violations. At this writing, Earth Island and Edison are conducting settlement negotiations.

In a related matter, the Commission recently approved SCE's plan to restore the mouth of the San Dieguito River Valley in mitigation of the damage to fish and plant life caused by SONGS' cooling systems. *[12:2&3 CRLR 226–27]* The project to restore 180 acres of wetlands is expected to cost the utility $20–$25 million. San Dieguito River Valley Regional Park supporters hailed the lagoon restoration project as part of an overall plan to create a 55-mile park from Del Mar to Julian. Rimmon C. Fay, one of three biologists on the Marine Review Committee (MRC) that conducted the 15-year study of damage caused by the nuclear plant's cooling systems, questioned the efficacy of offsite mitigation in this situation, stating that only the cooling towers recommended by the MRC can solve the problems caused by SONGS.

Upon a motion for rehearing, the Second District Court of Appeal again found, in ***Patrick Media Group, Inc. v. California Coastal Commission***, No. B056181 (Sept. 15, 1992), that the Patrick Media Group's complaint for compensation was barred by its failure to challenge a Commission requirement to remove an advertising display by means of a petition for a writ of administrative mandamus accompanied, or followed, by an inverse condemnation claim for compensation. *[12:2&3 CRLR 228]*

RECENT MEETINGS

In July, the Commission criticized the City of Laguna Beach for failing to address the issue of coastal access in private communities. The Commission considered refusing to certify the Implementation Plan of the City's LCP as a penalty for the City's foot-dragging; however, it finally decided to retain land use control over four of the city's beachfront communities—Three Arch Bay, Irvine Cove, Treasure Island, and Blue Lagoon. In doing so, the Commission retains its authority over these areas until the City proposes a long-term plan permitting public access to exclusive "pocket" beaches. With few exceptions, the Commission has not been able to pry a public opening through locked-gate communities that existed before it was created.

In August, the Commission unanimously approved a plan by Monarch Beach Resorts, Inc., to develop the 225-acre Monarch Beach Resort in Dana Point. The resort community will boast a 400-room hotel, a luxury residential development, and the Links at Monarch, an existing golf course. The Commission took note of the Resort's plan to include hiking and biking trails, vista points, botanical gardens, and tramways to provide public access to the resort and the beach. The golf course must also reserve 50% of its starting times for the public. The Commission also required the resort to dedicate 25% of the housing in the residential area to "affordable" homes.

In September, the Commission objected to the Air Force's consistency determination for the acquisition of easements affecting the potential development of land adjacent to Vandenberg Air Force Base. The purpose of the easements is to assure that development occurring on this land will not exceed a level consistent with public safety needs due to the "hazard footprints" for fallout of debris that may occur from aborted missile launches at Vandenberg. The Air Force seeks to establish a "Zero Development Line," west of which no permanent residential development would be allowed. This would be accomplished by a 6,000-acre easement extinguishing all potential development. The Air Force also seeks to establish a "Low Development Line," establishing an area between that line and the Zero Development Line where a permanent 22,000-acre easement would be acquired that would place a limit on the total number of permanent structures that could be developed. Under this easement, a maximum of 45 homes would be permitted. The easements would not affect ongoing uses, such as existing structures, cattle grazing and support, and oil wells, including storage facilities. The area on which the easements would be imposed is known as Bixby Ranch. The Commission objected to the Air Force's plan because the LCP for Santa Barbara County requires public access, recreation and camping facilities, and biking trails to be provided concurrent with any future development of the Bixby Ranch. The LCP was approved with development of the entire area in mind and requires public facilities and beach access commensurate with present and future development. Easements extinguishing and limiting the development potential of the area will create an imbalance in the LCP, and it is probable that an amendment would be required. The Air Force stated that it has no intention of blocking any future access improvements anticipated by the LCP for the area, with the exception that it would not allow permanently occupied structures, and that it would reserve the right to close off access trails, campgrounds, and other facilities during missile launches. The Air Force is currently considering further action it may take regarding the easements.

In September, the Commission approved Crescent City's proposal to construct an artificial reef consisting of concrete boxes filled with steel and clay pipe for purposes of enhancing recreational fishing opportunities in the Crescent City harbor. Crescent City sought the permit to improve the fishing area at the "B" Street Pier in the hope of discouraging people from climbing out on the harbor jetty to fish, thereby risking harm to both the jetty and themselves. The Commission required Crescent City to obtain review from the U.S. Army Corps of Engineers prior to beginning the project.

Also at its September meeting, the Commission heard a report from Executive Director Peter Douglas on the $833,000 budget cut imposed on the Commission. Douglas noted that as many as ten members of the Commission's 100-member staff may have to be laid off; other measures will also have to be taken. Douglas also proposed that the Commission consider developing a set of guidelines by which annual, limited events such as Pro-Beach Volleyball and thunderboat (hydroplane) races may be approved without the current process of staff reports and recommendations.

FUTURE MEETINGS

December 8–11 in San Francisco.

CALIFORNIA ENERGY COMMISSION

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In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act.